



Signed and Filed: July 5, 2022

*Dennis Montali*

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re: ) Bankruptcy Case  
PG&E CORPORATION, ) No. 19-30088-DM  
 ) Chapter 11  
- and - )  
 ) Jointly Administered  
PACIFIC GAS AND ELECTRIC )  
COMPANY, )  
 ) Date: September 6, 7 and 8,  
Reorganized Debtors. ) 2022  
 ) Time: 9:30 AM  
 ) Via Zoom Video  
☐ Affects PG&E Corporation )  
☐ Affects Pacific Gas and )  
Electric Company )  
☒ Affects both Debtors )  
 )  
\* All papers shall be filed in )  
the Lead Case, No. 19-30088 )  
(DM) . )  
 )

**AMENDED<sup>1</sup> SCHEDULING ORDER FOR REMOTE TRIAL**

On April 12, 2022, the court held a scheduling conference on the *Motion for Relief from Plan Injunction, to Compel Arbitration and/or for Abstention* filed by Fulcrum Credit

<sup>1</sup> Amended to reflect later start time of trial and at pgs. 3-4 to clarify requirements for video testimony.

Partners LLC and Tuscan Ridge Associates, LLC (collectively as "Claimants") (Dkt. No. 11066), and *Reorganized Debtors' Objection to Proof of Claim No. 58562 Filed by Fulcrum Credit Partners LLC as Transferee of Tuscan Ridge Associates, LLC* (Dkt. No. 11288). Jane Kim and Laura L. Goodman appeared for the Reorganized Debtors. Diane C. Stanfield appeared for Fulcrum Credit Partners LLC. Jamie P. Dreher appeared for Tuscan Ridge Associates, LLC.

Upon due consideration, the court hereby enters the following scheduling order.

**TRIAL.** The trial or hearing ("Trial") on the above matter(s) will commence on the Date and Time of Trial, set forth below and to be held via Zoom Video. Other relevant dates are also shown below. During the week prior to the Trial, the court may move the starting time or day. The court's Calendar Clerk/Courtroom Deputy will advise the parties of any such change by telephone or e-mail. **All parties are cautioned to be prepared to adjust their schedules accordingly.**

The court is closed to an in-person trial as a result of the dangers presented by the COVID-19 pandemic. In accordance with Federal Rule of Civil Procedure 43(a), made applicable here by Federal Rule of Bankruptcy Procedure 9017, for good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony by contemporaneous transmission from a location other than the courtroom. The court finds that the public danger presented by the COVID-19 pandemic merits application of this rule as to all witnesses who may remotely

1 testify at the Trial, through the use of video conferencing  
2 technology.

3 Further, the court finds that these procedures will provide  
4 adequate safeguards for purposes of Federal Rule 43(a) and  
5 ensure due process of law. These procedures will (i) enable the  
6 court to identify, communicate with, and judge the demeanor of  
7 all witnesses in real time, (ii) enable counsel for the parties  
8 to see and hear the witness testimony, interpose objections, and  
9 communicate with the court in real time, (iii) enable the  
10 parties, the witnesses and the court to have simultaneous access  
11 to an identical set of pre-marked exhibits, (iv) avoid any undue  
12 influence or interference with the witnesses in connection with  
13 their testimony, and (v) preserve the ability of any witness to  
14 be represented by counsel during the proceeding, and to  
15 communicate with such counsel as the court deems appropriate.

16 Participants in the Trial will be connected with the  
17 courtroom but will not be physically present. The court staff  
18 will provide a link or URL (internet address) to the persons  
19 identified by the parties.

20 **Participation by telephone alone is unacceptable except by**  
21 **prior agreement of the opposing party or counsel and prior**  
22 **approval of the court. A party or witness not able to appear,**  
23 **and be seen and heard via Zoom will not be permitted to testify.**  
24 **Each participating attorney and each witness must have**  
25 **simultaneous access to a computer, equipped with a camera, that**  
26 **is capable of receiving and transmitting audio and video, or a**  
27 **tablet or smart phone, that satisfy the following requirements:**  
28 **(1) Internet browsing software that is adequate to facilitate**

1 the court's video hearing provider, (2) an Internet connection  
2 with bandwidth adequate to support the individual's use of the  
3 video hearing provider, and (3) Adobe Acrobat Reader for  
4 purposes of reviewing exhibits, as directed by counsel or the  
5 court. The device must have sufficient video and audio  
6 capabilities to allow the speaker to hear and be heard by other  
7 participants on a consistent basis. Further, the attorney or  
8 witness using it must be situated in a location with wi-fi,  
9 cellular, or other service adequate to provide clear audio and  
10 video.

11 No later than **August 29, 2022**, the parties shall provide to  
12 the courtroom deputy (Ms. Lorena Parada,  
13 [Lorena\\_Parada@canb.uscourts.gov](mailto:Lorena_Parada@canb.uscourts.gov), 415-268-2323), and to each  
14 other, a list of all attorneys and witnesses who will  
15 participate in the Trial (other than those witnesses intended  
16 for impeachment or rebuttal), together with an email address and  
17 telephone number for each. The telephone number provided should  
18 be a number at which the attorney or witness can be reached  
19 during the Trial in the event of an interruption of the video or  
20 audio feed. This requirement is in addition to any requirements  
21 previously or subsequently established by the court for the  
22 parties to disclose to each other, by a date certain, the  
23 identity of the witnesses they intend to present at trial.

24 **MOTIONS**. All dispositive motions must be filed by the date  
25 set forth below.

26 **DISCOVERY**. Fact discovery shall be completed by the Fact  
27 Discovery Deadline shown below. Completion means that  
28 depositions must be concluded, although not necessarily

1 transcribed. As to written and production discovery, responses  
2 must be due before the Fact Discovery Deadline. The court will  
3 attempt to resolve all discovery disputes on an expedited basis  
4 via telephonic conference, which any party may initiate by  
5 request to Ms. Parada, and notice to the other party after they  
6 have met and conferred and made a good faith effort to resolve  
7 the dispute. The party requesting the conference should submit  
8 a brief letter or e-mail to Ms. Parada explaining the issues to  
9 be presented; the other party may submit a brief letter or e-  
10 mail in the same manner.

11 The Fact Discovery Deadline may be extended by the parties  
12 by agreement, without an order of the court.

13 **EVIDENCE**. Declarations of non-expert witnesses will not be  
14 considered except by stipulation of the parties or prior court  
15 approval.

16 **PRE-TRIAL SUBMISSIONS**. Not later than 7 calendar days  
17 before the Date and Time of Trial, each party shall:

18 (a) File and serve copies of a trial brief, which shall  
19 include a summary of the facts to be proven and the legal  
20 theories on which the party relies. Briefs shall not exceed 15  
21 pages without prior permission of the court. The court will not  
22 normally request or permit post-trial briefs.

23 (b) File and serve a witness list, including a brief  
24 summary of the anticipated testimony from each witness. If a  
25 party to the matter will be called as a witness (even as an  
26 adverse witness) that party's name must be included on the  
27 witness list. The presence of a witness' name on the witness  
28 list is to alert the court and the other side that the witness

1 may be called. It does not mean that that person will be  
2 called. Accordingly, each party is responsible for ensuring the  
3 attendance of every witness the party intends to call, whether  
4 or not named by the other side. Except in exceptional  
5 circumstances, absent consent by the other side, a party will  
6 not be allowed to call a witness not named on that party's  
7 witness list. This subparagraph shall not apply to impeachment,  
8 rebuttal or expert witnesses or their testimony.

9 (c) File and serve a list of exhibits the party intends to  
10 introduce into evidence (other than those to be used for  
11 impeachment or rebuttal). Exhibits that are already on the  
12 court's docket do not need to be served but must be listed by  
13 docket number and a brief description. Copies of all exhibits  
14 not already of the docket must be produced as separately titled  
15 pdf files, identifying each exhibit by exhibit number or letter  
16 and a brief description. Lengthy exhibits should be bookmarked  
17 in order to allow counsel, witness and the court to readily  
18 access the relevant portion(s) of the exhibit.

19 Those exhibits shall also be emailed to  
20 [Montali.Orders@canb.uscourts.gov](mailto:Montali.Orders@canb.uscourts.gov).

21 Upon receipt of the electronic documents, each attorney and  
22 witness shall take the steps necessary to ensure that all  
23 electronic documents can be successfully opened and are readily  
24 available during the Trial.

25 Exhibits to be used solely for rebuttal or impeachment  
26 shall be encrypted in pdf format with a simple user-friendly  
27 password. They will be emailed to counsel, the parties, the  
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1 courtroom deputy only and identified and marked as such when  
2 directed by the court.

3 (d) Reorganized Debtors' exhibits should be marked by  
4 number and Claimants' exhibits should be marked by letter.

5 CONDUCT OF TRIAL VIA VIDEO. Any witness called to testify  
6 at the Trial shall testify by contemporaneous transmission from  
7 a different location into the video courtroom (each a "Remote  
8 Witness").

9 (a) Each Remote Witness shall be placed under oath and  
10 their testimony shall have the same effect and be binding upon  
11 the Remote Witness in the same manner as if such Remote Witness  
12 were sworn and testified in open court.

13 (b) Each Remote Witness shall provide their testimony from  
14 a quiet room and must situate themselves in such a manner as to  
15 be able to both view the video and be seen by the Court.

16 (c) While the Remote Witness is sworn and testifying: (i)  
17 no person may be present in the room from which the Remote  
18 Witness is testifying, (ii) the Remote Witness may not have in  
19 the room any documents except the exhibits submitted by the  
20 parties pursuant to this order and any declaration submitted in  
21 lieu of direct testimony, and (iii) may not communicate with any  
22 other person regarding the subject of their testimony, by  
23 electronic means or otherwise. If the witness or their counsel  
24 seek to communicate with one another, either shall openly  
25 request a recess for such purpose. If such request is granted  
26 by the Court, the witness and their counsel may privately  
27 confer "offline," i.e., by telephonic means that are not  
28 transmitted to the other parties.

1 (d) Remote Witnesses who are testifying as experts must  
2 provide advance direct testimony by declaration submitted by the  
3 parties pursuant to this order. Remote Witnesses shall be  
4 available for cross examination. Failure of a Remote Witness to  
5 be available for cross examination may result in striking of the  
6 Remote Witness's declaration.

7 EXPERTS. The presentation of expert testimony at Trial  
8 shall be governed by the following:

9 (a) Direct evidence shall be presented by a declaration  
10 that authenticates the report of the expert. See FRCP  
11 26(a)(2)(B), incorporated via Fed. R. Bankr. P. 7026. Each  
12 party shall file and serve declarations of experts and other  
13 documentary evidence related thereto no later than the Expert  
14 Disclosure and Reports Deadline set forth below.

15 (b) To cross-examine an opposing party's expert declarant,  
16 a party shall notify the opposing party in writing or by e-mail  
17 at least **3 court** days before the Date and Time of Trial, in  
18 which case the declarant will be required to be available to  
19 appear at Trial via Zoom. Any party who fails to notify the  
20 opposing party will not be permitted to cross-examine the  
21 opposing party's expert. Any party who requests the right to  
22 cross-examine an expert and then does not do so will be expected  
23 to reimburse the opposing party no less than the expenses  
24 incurred in producing the expert at the Trial.

25 If either party anticipates the use of rebuttal expert  
26 testimony, such rebuttal expert disclosures and reports shall be  
27 submitted by the date set forth below.



1        **PRE-TRIAL OBJECTIONS.** Promptly after receipt of the items  
2 mentioned in **PRE-TRIAL SUBMISSIONS**, above, each party must  
3 advise the opposing party of any objections to the introduction  
4 of testimony or exhibits. Parties must meet and confer before  
5 Trial to attempt to reach agreement regarding admissibility.  
6 The court expects the parties to make good faith efforts to  
7 resolve all evidentiary issues.

8        **MOTIONS IN LIMINE.** If efforts to resolve disputes regarding  
9 the introduction of testimony or exhibits are unsuccessful,  
10 motions in limine should be filed and served no later than **4**  
11 **court** days before the Date and Time of Trial. Such motions  
12 should include a certification that the moving party has  
13 complied in good faith with the meet and confer requirements of  
14 the preceding paragraph. Opposition should be filed and served  
15 no later than **1 court** day before the Date and Time of Trial.  
16 Motions in limine will be heard at the commencement of Trial.

17        Notwithstanding the foregoing, if a party intends by a  
18 motion in limine to exclude an expert or the expert's report,  
19 that party should set the motion on the court's regular law and  
20 motion calendar, to be heard at least **7** calendar days before the  
21 Date and Time of Trial.

22        **STIPULATIONS.** At the commencement of Trial, the parties  
23 must be prepared to stipulate into evidence all exhibits that  
24 are admissible for at least one purpose. Bona-fide objections  
25 may be reserved, with the issue of admissibility deferred until  
26 the exhibit is offered into evidence.

1       **ORDER OF PRESENTATION AT TRIAL.** Unless otherwise agreed by  
2 the parties or ordered by the court, the Claimants will present  
3 their cases-in-chief first.

4       **IMPEACHMENT AND REBUTTAL WITNESSES.** The requirement of  
5 advance identification of witnesses and production of exhibits  
6 does not apply to witnesses and exhibits presented for purposes  
7 of impeachment or rebuttal.<sup>2</sup> This paragraph supersedes the  
8 expert disclosure procedure of FRCP 26(a)(2)(D)(ii),  
9 incorporated via Fed. R. Bankr. P. 7026.

10       **DEMONSTRATIVE EVIDENCE.** The court does not want charts,  
11 power point presentations, whiteboards, or similar large display  
12 items to be used during trial. Parties desiring to summarize,  
13 reproduce or display evidence may use the "Share Screen" feature  
14 in Zoom, subject to the court's permission. Any exceptions to  
15 this policy should be requested well in advance of trial.

16       **NOTICE TO COURT.** No later than the Monday of the week prior  
17 to the Date and Time of Trial, counsel for the Reorganized  
18 Debtors **must** telephone or e-mail the court's Calendar  
19 Clerk/Courtroom Deputy, Ms. Lorena Parada (415-268-2323;  
20 Lorena\_Parada@canb.uscourts.gov) and report: whether the parties  
21 intend to go forward with the Trial as scheduled; if settlement  
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24       <sup>2</sup> The proper function of rebuttal evidence is to contradict,  
25 impeach or defuse the impact of the evidence offered by an  
26 adverse party. Testimony offered only as additional support to  
27 an argument made in a case in chief is improper on rebuttal.  
28 Peals v Terre Haute Police Dept., 535 F.3d 621, 630 (7th Cir.  
2008); see also Daly v. Far Eastern Shipping Co., 238 F.Supp.2d  
1231, 1238 (W.D. Wash. 2003), aff'd 108 Fed. Appx. 476 (9th Cir.  
2004).

1 is likely; whether the time reserved for the Trial is realistic;  
2 and any other relevant information.

3 **NON-COMPLIANCE**. Any failure of a party to comply timely  
4 with this scheduling order may result in judgment against such  
5 party, removal of the Trial from calendar, exclusion of evidence  
6 or imposition of monetary or non-monetary sanctions. See FRCP  
7 16(f)(1)(C), incorporated via Fed. R. Bankr. P. 7016.

8 **DATE AND TIME OF TRIAL**: September 6, 7 and 8, 2022, at  
9 9:30 AM

10 **TIME RESERVED FOR TRIAL**: Three days

11 **LAST DAY FOR CLAIMANTS TO SERVE AMENDED WRITTEN DISCOVERY**  
12 **RESPONSES**: April 22, 2022

13 **LAST DAY FOR PARTIES TO PRODUCE DOCUMENTS**: May 2, 2022

14 **LAST DAY FOR PARTIES TO PRODUCE PRIVILEGE LOGS**: May 9,  
15 2022

16 **FURTHER SCHEDULING CONFERENCE**: May 10, 2022, at 10:00 AM

17 **LAST DAY TO COMPLETE FACT DISCOVERY**: July 22, 2022

18 **EXPERT DISCLOSURES WITH REPORTS**: August 1, 2022

19 **LAST DAY TO FILE DISPOSITIVE MOTIONS**: August 2, 2022

20 **REBUTTAL EXPERT DISCLOSURES**: August 15, 2022

21 **LAST DAY TO COMPLETE EXPERT DEPOSITIONS**: August 22, 2022

22 **PRE-TRIAL STATUS CONFERENCE**: The court will conduct a pre-  
23 trial status conference on August 23, 2022, at 10:00 AM via  
24 Zoom. In addition to normal business, counsel and the court  
25 will test the adequacy of all parties' audio and video  
26 connections and other matters related to the conduct of the  
27 remote trial. The court expects counsel to take similar steps  
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1 prior to trial (but without court involvement) to assure proper  
2 connections with their respective clients and witnesses.

3 **OTHER PROVISIONS:** Although conducted using video  
4 conferencing technology, the Trial constitutes a court  
5 proceeding. No person shall record, from any location or by any  
6 means, the audio or video of the Trial. The audio recording  
7 created and maintained by the court shall constitute the  
8 official record of the Trial. Further, the formalities of a  
9 courtroom shall be observed. Counsel and witnesses shall dress  
10 appropriately, exercise civility, and otherwise conduct  
11 themselves in a manner consistent with the dignity of the court  
12 and its proceedings.

13 \*\*END OF ORDER\*\*  
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